

SHORT PARTICULARS OF CASES
APPEALS

OCTOBER 2026

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This document is intended as a brief summary of the matter heard before the Full Court and is not a substitute for the submissions or ultimate reasons of the Court.

SALEH v HOMES VICTORIA (M56/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 339

Date of judgment: 19 December 2025

Special leave granted: 14 May 2026

Factual background

Homes Victoria is a body corporate established under s 9(2) of the *Housing Act 1983* (Vic) ('the Act') which owns and manages public housing towers in Melbourne. In September 2023, the Victorian Government decided to retire all of Melbourne's public housing towers and redevelop on the land on which they are located. Following the decision, Homes Victoria began taking steps to implement the policy of the Victorian Government pursuant to section 15(1)(a) of the Act, which empowers Homes Victoria to 'develop any land ... vested in [it]' ('the Decision').

The tenants of the public housing towers submit that they were not given any prior notice of the Decision from Homes Victoria. This appeal concerns whether Homes Victoria's powers under s 15(1)(a) is conditioned by an obligation to afford procedural fairness.

Procedural background

The Court of Appeal (Niall CJ, Kennedy JA and Forrest AJA) found that the making of the Decision did not affect the tenants in any direct or immediate way, given that the making of the Decision itself did not confer Homes Victoria the power to evict a tenant from their home. The Court of Appeal accepted the respondent's evidence that, under the tenancy agreement, Homes Victoria is obliged to undertake various steps to plan for the relocation of the tenants and entering into contracts for the demolition of the existing buildings. As the Decision did not directly affect the rights of tenants, their Honours held that procedural fairness does not apply to the exercise of s 15(1)(a).

This appeal

The ground of appeal is:

1. The Court of Appeal erred in concluding that the respondent was not required to afford procedural fairness to tenants ('Group Members') living in three public housing towers ('the Towers') before deciding under s 15(1)(a) of the Act on 18 September 2023 to demolish 44 housing towers, including the Towers, on the basis that: (a) the Decision did not directly affect the legally recognised rights or interests of Group Members; and (b) the power under s 15(1)(a) was not of a nature that attracted an obligation to afford procedural fairness.

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY LIMITED & ANOR v NORTHERN TERRITORY OF AUSTRALIA (D15/2025)

Date writ of summons filed:

23 December 2025

Date amended special case referred to Full Court:

17 September 2026

Factual and procedural background

The plaintiffs challenge the validity of s 7A(2AB) of the *Bail Act 1982* (NT) ('the Bail Act'), which requires a court not to grant bail unless it has a high degree of confidence that the bail applicant would not commit any of certain prescribed offences or otherwise endanger community safety if released on bail.

The plaintiffs contend that s 7A(2AB) is inconsistent with Ch III of the *Constitution* because it substantially impairs the institutional integrity of Northern Territory courts, as a detention power not reasonably necessary for a legitimate and non-punitive purpose as an incident of the judicial function of adjudging and punishing persons for criminal guilt.

A notice of a constitutional matter was filed by the first plaintiff. The Attorney-General of the Commonwealth, who is intervening in the matter, also filed a notice of a constitutional matter. The Attorneys-General of all six States and of the Australian Capital Territory are intervening.

Special case

An amended special case filed by the parties states the following questions of law, which Acting Chief Justice Gordon referred for consideration by a Full Court:

1. Do the plaintiffs have standing to seek the declarations claimed in the Writ of Summons in relation to s 7A(2AB) in any of its applications?
2. Are the declarations which the plaintiff claims in the Writ of Summons hypothetical in relation to any applications of s 7A(2AB)?
3. Subject to the answers to Questions 1 and 2, is s 7A(2AB) of the Bail Act inconsistent with Ch III of the *Constitution* and therefore invalid in any (and if so which) of its applications?
4. Subject to the answers to Questions 1 to 2, is s 7A(2AB) of the Bail Act capable of being applied in any (and if so which) of its applications, by s 68(1) of the *Judiciary Act 1903* (Cth), to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of the Northern Territory by s 68(2) of the *Judiciary Act 1903* (Cth) because:
 - (a) if s 7A(2AB) were to be applied as a Commonwealth law, it would be inconsistent with Ch III of the Constitution; and/or
 - (b) in so far as s 7A(2AB) operates together with s 7A(1)(d), (da) and (f), read with ss 3A(1) and 3(1), s 7A(2AB) is invalid to that extent on the basis that it purports to directly regulate the exercise of federal jurisdiction?

5. What if any relief should be granted?
6. Who should pay the costs of the special case?

AGRINOVA PTY LTD ACN 629 285 589 v CHIEF COMMISSIONER OF STATE REVENUE (NSW) & ANOR (S21/2026)

Court removed from: Supreme Court of New South Wales Court of Appeal

Date removed: 19 March 2026

Date special case referred to Full Court: 27 May 2026

Factual background

This matter concerns the powers of States to grant stamp duty exemptions and the validity of s 90(1)(a) of the *Family Law Act 1975* (Cth) ('the Act') in its application to duties or charges under the law of a State. The applicant also seeks leave to reopen and overrule the majority decision in *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227 regarding the constitutional validity of s 90(1)(a) regarding property transfers under Part VIII of the Act.

The applicant is the corporate trustee of a unit trust involved in Family Court proceedings between a former husband and wife in which the ultimate beneficiaries include the ex-husband and his other family members. In 2019, the Family Court made various orders for the separation of matrimonial assets, including orders by consent for the sale of real property by the ex-wife, and by the ex-husband's parents, to the applicant. In 2021, the first respondent investigated whether certain property transfers were eligible for an exemption from duty and ultimately concluded that duty be assessed and penalties imposed. The applicant objected to the Duties Assessment Notices ('the DANs') issued by the first respondent which amounted to over \$1.35 million. The second respondent is the New South Wales Civil and Administration Tribunal ('the NCAT') which upheld the DANs issued by the first respondent.

Procedural background

The cause removed into this Court pursuant to s 40(2) of the *Judiciary Act 1903* (Cth) is an application to the Supreme Court of New South Wales Court of Appeal for judicial review of the above decision by the Appeal Panel of the NCAT.

The applicant and the first respondent have each filed Notices of a Constitutional Matter. The Attorney-General of the Commonwealth intervenes in support of the applicant. The Attorneys-General of the States of Queensland, South Australia and Victoria intervene in support of the first respondent.

Special case stated

Chief Justice Gageler ordered the following questions in the form of a Special Case be referred for opinion of the Full Court:

1. Did the Appeal Panel of the NCAT err in law by conducting the review on the basis that s 90(1)(a) of the Act was invalid in relation to the transfers of property to Agrinova Pty Ltd?
2. If the answer to question 1 is yes, was any error of law material?
3. What if any relief should be granted?

4. Who should pay the costs of the proceeding in this Court and in the Court of Appeal?

A.C.N. 652 661 955 PTY LTD & ORS v VALMORBIDA (M43/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 319

Date of judgment: 11 December 2025

Special leave granted: 9 April 2026

This appeal concerns the operation of prescriptive easements acquired by 20 years of continuous use in Victoria.

Factual background

The appellants became registered proprietors of a battle-axe shaped block of vacant land in Sorrento, Victoria in 2021. Since 1996, the respondent has been the registered proprietor of a property which bordered the strip of land that is the 'handle' of the battle-axe and used this strip of land to access her property.

Procedural background

A dispute arose as to whether the respondent had a right to continue to use the appellants' strip of land to access her property. She commenced a proceeding in the trial division of the Supreme Court of Victoria seeking declaratory relief to allow her to continue to use it. The trial judge found in favour of the respondent, holding that the appellants held the land subject to an unregistered common law easement as a long user applying the principle that an owner of a burdened tenement is bound by the acquiescence of their predecessors of title. The appellants sought leave to appeal this decision.

The Court of Appeal (Emerton P, Richards and Kenny JJA) upheld the trial judge's finding that, at general law, an easement can arise based on 20 or more years of use despite changes in ownership of the relevant land during the period of use and confirmed that s 42(2) of the *Transfer of Land Act 1958* (Vic) creates exceptions to indefeasibility of title, including 'any easements howsoever acquired subsisting over or upon or affecting the land' describing the estate of the registered proprietor of land from time to time, not only at the point of registration. It held that even if this may operate unfairly in the case of a person who becomes the registered proprietor towards the end of the 20-year period, the legislative history supported the fact that this was a deliberate choice by Parliament to expressly preserve this exception.

This appeal

The grounds of appeal are:

1. The Court of Appeal erred in holding that at general law a prescriptive easement can arise based on 20 years of use of the putative servient tenement despite changes in ownership of that land during the 20-year period.
2. The Court of Appeal erred in holding that a proprietor of land registered under the *Transfer of Land Act 1958* (Vic) holds that land subject to any inchoate prescriptive easement based on less than 20 years use prior to registration of the registered proprietor's interest.

GBU v THE KING (B29/2026)

Court appealed from: Supreme Court of Queensland Court of Appeal
[2025] QCA 196

Dates of judgment: 21 October 2025

Special leave granted: 22 April 2026

Factual background

The appellant was charged with murder after confessing to police that he had killed his wife. Until four months prior to the killing, the appellant had regularly used illicit drugs over the course of many years, and a resulting psychotic illness gave rise to his having paranoid delusional beliefs about his wife.

Procedural background

The Mental Health Court found that the appellant was of diminished responsibility because his psychotic illness had substantially impaired his capacity to know that he ought not do the acts that caused his wife's death. The appellant then pleaded guilty to manslaughter, with the maximum penalty for which being life imprisonment.

In the Supreme Court, Martin SJA sentenced the appellant to 12 years' imprisonment with a non-parole period of nine years and seven months. This was after indicating that the case was an appropriate one for general deterrence, as the appellant's mental illness was caused by his own long-term drug taking. An appeal by the appellant was unanimously dismissed by the Court of Appeal (Bowskill CJ, Mullins P and Brown JA), which held that the sentencing judge had not erred by focusing on the non-organic origin of the appellant's illness and that the sentence imposed was not manifestly excessive.

This appeal

In this Court, the appellant submits that the sentencing judge erred by not addressing reduced moral culpability in the circumstances, which included no criminal history of offending while mentally ill or intoxicated, and the appellant's thoughts and actions in embarking on drug-taking were very distant and different from those at the time of the killing. The appellant also submits that his case was a less suitable vehicle for general deterrence and that the sentencing judge should have addressed a moderation of that factor accordingly.

The respondent contends that the appellant's psychiatric abnormality was duly considered at sentencing in an integrated assessment of factors, among which general deterrence retained some relevance. The respondent submits that, compared with the maximum sentence for manslaughter, 12 years' imprisonment was proportionate, and any resentencing of the appellant would not result in a lesser sentence.

The ground of appeal is:

1. The Court of Appeal erred, by disconnecting from its assessment of the exercise of sentencing discretion, the effect of the Mental Health Court's decision.

The appellant seeks leave to amend his ground of appeal to:

1. The Court of Appeal erred, by not finding that the appellant's diminished responsibility required that his penalty be mitigated.